

DOCKET FILE COPY ORIGINAL

ORIGINAL

LAW OFFICES

KOTEEN & NAFTALIN

1150 CONNECTICUT AVENUE  
WASHINGTON, D.C. 20036

BERNARD KOTEEN  
ALAN Y. NAFTALIN  
RAINER K. KRAUS  
ARTHUR B. GOODKIND  
GEORGE Y. WHEELER  
HERBERT D. MILLER, JR.  
MARGOT SMILEY HUMPHREY  
PETER M. CONNOLLY  
M. ANNE SWANSON  
CHARLES R. NAFTALIN  
GREGORY C. STAPLE  
MORTON J. POSNER

TELEPHONE  
(202) 467-5700  
TELECOPY  
(202) 467-5915

August 14, 1995

RECEIVED

AUG 14 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

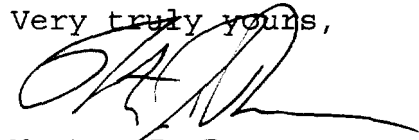
Re: In the Matter of Broadband Personal Communications  
Services C Block Auction and Grant of A and B Block  
Licenses (PP Docket No. 93-253; ET Docket No. 92-100)

Dear Mr. Caton:

Transmitted herewith, on behalf of American Portable  
Telecommunications, Inc., are an original and two copies of a  
Response to the "Emergency Motion to Reschedule C Block Auction  
or Review and Condition Grant of A and B Block Licenses" filed by  
the Rural Ad Hoc PCS Consortium in the above-captioned matter.

If there are any questions concerning this matter, please  
contact me.

Very truly yours,



Morton J. Posner

Enclosure

No. of Copies rec'd  
List ABCDE

0+2

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED

AUG 14 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Broadband Personal ) PP Docket No. 93-253;  
Communications Services ) ET Docket No. 92-100  
C Block Auction and Grant of )  
A and B Block Licenses )

To: The Commission

**RESPONSE OF AMERICAN PORTABLE TELECOMMUNICATIONS, INC.**

American Portable Telecommunications, Inc. ("APT"), by its attorneys, hereby responds to the August 2, 1995 Emergency Motion to Reschedule C Block Auction or Review and Condition Grant of A and B Block Licenses ("Emergency Motion") filed by the Rural Ad Hoc PCS Consortium ("Consortium").

APT was the winning bidder for eight of the 99 A and B block PCS authorizations.<sup>1</sup> We take no position on the Consortium's

---

<sup>1</sup> Specifically, APT holds the following PCS authorizations:

- (1) Market 12, Minneapolis-St. Paul, Frequency Block B, File No. 00021-CW-L-95;
- (2) Market 13, Tampa-St. Petersburg-Orlando, Frequency Block A, File No. 00022-CW-L-95;
- (3) Market 14, Houston, Frequency Block A, File No. 00024-CW-L-95;
- (4) Market 21, Pittsburgh, Frequency Block B, File No. 00039-CW-L-95;
- (5) Market 34, Kansas City, Frequency Block B, File No. 00065-CW-L-95;
- (6) Market 38, Columbus, Frequency Block B, File No. 00073-CW-L-95;
- (7) Market 49, Alaska, Frequency Block A, File No. 00094-CW-L-95;
- (8) Market 50, Guam-Northern Mariana Islands, Frequency Block B, File No. 00097-CW-L-95.

"emergency" request that the Commission immediately reschedule the postponed C block PCS application and auction process.<sup>2</sup> However, as we show below, insofar as the Emergency Motion relates to A and B block licensing, it is procedurally defective in several respects and should be dismissed.

The Consortium's Request For A Stay Is  
Procedurally Defective and Should Be Dismissed.

The Consortium asks that if the C block auction is not immediately rescheduled, the Commission reconsider its June 23, 1995 grant of A and B block licenses and delay the effectiveness of those grants until C block frequencies are licensed.

1. Although the Emergency Motion makes a substantive request regarding the C block auction, it also requests a stay of A and B block licensing. The stay request is not contained in a separate pleading, as required by Section 1.44(e) of the Commission's rules, and should be dismissed as "procedurally defective."<sup>3</sup>

---

<sup>2</sup> On July 27, 1995 and August 9, 1995, respectively, the Commission postponed the C block application and auction process in response to a stay ordered July 27 by the U.S. Court of Appeals for the District of Columbia Circuit in Omnipoint Corp. v. FCC, No. 95-1374. As we presently understand the Omnipoint stay order, it should be possible to commence the C block application and auction process as soon as non-designated entities are allowed a reasonable period, perhaps as little as 60 days, to acquire 49 percent investors if they so desire.

<sup>3</sup> Applications for A and B Block Broadband PCS Licenses, Order, DA 95-1411, File Nos. 00001-CW-L-95 through 00099-CW-L-95, Call Signs KNLF 204 through KNLF 302, n.1 (Wireless Telecom. Bur., released June 23, 1995).

2. Although the Consortium requests a stay of the grant of all of the A and B block licenses, it has served none of the licensees, including APT. This failure violates Section 1.47 of the Commissions rules, and therefore renders the request procedurally defective and subject to dismissal.

3. In substance, the Consortium asks that the Commission review the June 23, 1995 Wireless Telecommunications Bureau order denying review of its earlier order denying a stay of A and B block licensing. Under Section 1.115 of the Commission's rules, this relief may be requested only by filing an application for review within 30 days of the release of that order. As the Consortium concedes (p. 1), its present filing missed the July 24, 1995 deadline to file such an application.<sup>4</sup>

4. Even if such an application had been timely filed, the Consortium, which is a newcomer to this proceeding, has not explained, as required by Section 1.115(a) of the Commission's rules, how it is aggrieved by grant of the A and B block licenses and why it did not previously participate in that proceeding. APT and the public will be irreparably harmed if A and B block licensing is stayed.<sup>5</sup> The Commission should not entertain the

---

<sup>4</sup> See 47 U.S.C. § 405(a); 47 C.F.R. § 1.115(d).

<sup>5</sup> We incorporate herein by reference the Opposition of American Portable Telecommunications, Inc. to Application for Review of Denial of Stay, filed August 8, 1995 in the instant proceeding, discussing the irreparable injury APT and the public will suffer if A and B block licensing is stayed.

Consortium's untimely attempt to reopen the A and B block licensing process.<sup>6</sup>

Accordingly, APT submits that the Emergency Motion should be dismissed insofar as it relates to A and B block licensing.

Respectfully submitted,

AMERICAN PORTABLE TELECOMMUNICATIONS,  
INC.

By: 

Alan Y. Naftalin  
Morton J. Posner

KOTEEN & NAFTALIN  
1150 Connecticut Avenue, N.W.  
Suite 1000  
Washington, D.C. 20036  
(202) 467-5700

Its Attorneys

August 14, 1995

---

<sup>6</sup> See The New Continental Broadcasting Co., 89 FCC 2d 631, 632 n.2 (Rev. Bd. 1982) (non-responsive paragraphs of opposition to petition for review substantially seeking review of adverse portions of Review Board decision were stricken as untimely).

CERTIFICATE OF SERVICE

I, Phillis Merriett, a secretary in the law offices of Koteen & Naftalin, hereby certify that true copies of the foregoing "Response of American Portable Telecommunications, Inc." have been served upon the following by hand delivery, this 14th day of August 1995:

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W. Room 814  
Washington, D.C. 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W. Room 802  
Washington, D.C. 20554

Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, N.W. Room 826  
Washington, D.C. 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W. Room 844  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W. Room 832  
Washington, D.C. 20554

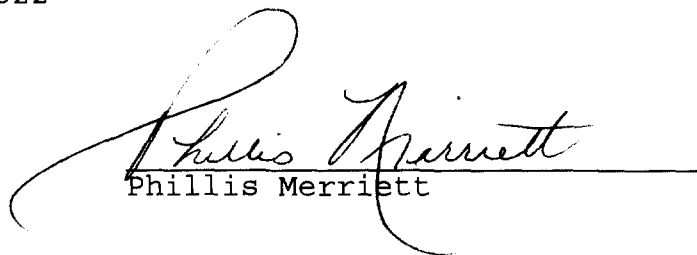
Robert M. Pepper, Chief  
Office of Plans and Policy  
Federal Communications Commission  
1919 M Street, N.W. Room 822  
Washington, D.C. 20554

William E. Kennard, Esq.  
General Counsel  
Federal Communications Commission  
1919 M Street, N.W. Room 614  
Washington, D.C. 20554

Regina Keeney, Chief  
Wireless Telecomm. Bureau  
Federal Communications Commission  
2025 M Street, N.W. Room 5002  
Washington, D.C. 20554

Kathleen O'Brien Ham  
Federal Communications Commission  
2025 M Street  
Room 5126-F  
Washington, D.C. 20554

David A. Irwin, Esq.\*  
Jeffrey L. Timmons, Esq.  
Irwin, Campbell & Tannenwald, P.C.  
1320 18th Street, N.W.  
Suite 400  
Washington, D.C. 20036

  
Phillis Merriett

\*By first class mail